



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 19 1980

OFFICE OF  
THE ADMINISTRATOR

MEMORANDUM

TO : Regional Administrators  
Assistant Administrators  
Office Directors  
General Counsel

FROM : Barbara Blum  
Deputy Administrator

A handwritten signature in cursive script, reading "Barbara Blum".

SUBJECT: EPA Policy for Program Implementation on Indian  
Lands

I have signed today the attached EPA Policy for Program Implementation on Indian Lands.

At the heart of the policy is the principle that tribal governments should have a key role in implementing pollution control programs affecting their reservations. This is in accord with the long established Federal policy in favor of Indian self-determination, and it is in accord with the theory written into many of our statutes, that environmental programs should be responsive to the local needs of the communities they affect.

This policy is the culmination of over two years of effort by the Indian Work Group and by individual Regions and program offices to respond to the special legal and governmental factors that affect administration of EPA programs on Indian reservations. It reflects the experience and the lessons learned by the various Regions and programs which have been particularly active and successful in carrying out our responsibilities in the unique context of Indian lands.

The policy's implementation section states that goals and principles are, in themselves, "not enough to effect changes or improvements in our program administration on

Indian lands. They must be reflected in actions taken with responsiveness, intelligence and initiative at all levels of the Agency." Accordingly, I hope that you will continue to contribute your experience and willingness to solve problems in developing an Implementation Plan for the policy and in making the principles of this policy a reality on reservation lands.

Finally, I wish to acknowledge the fact that the development of the policy has demanded your time, experience, ingenuity, and hard work, particularly in the last year of the Indian Work Group's activities under the direction of Bill Hedeman. The final product reflects this effort, and I commend those who have contributed to its development.

Attachment

EPA POLICY FOR  
PROGRAM ADMINISTRATION ON  
AMERICAN INDIAN RESERVATIONS

The Reservation Environment

American Indian reservations represent a significant sector of our country and its environment. The home and remaining land base for over 200 Indian tribes, reservation lands cover an area larger than the six states of New England and, in addition, the states of New Jersey, Delaware and Maryland.

These lands and their environmental problems are marked by contrast. Generally, they are characterized by vast distances, sparse populations and largely pristine environments. The environmental problems of the reservations are usually those common to rural America: safe drinking water and adequate sewer and waste disposal facilities. On the other hand, some reservations are located in urban areas, virtually surrounded by cities such as Phoenix and San Diego. And some reservations face the prospect of large-scale energy development, either on-reservation or nearby, with potentially massive environmental consequences for reservation lands.

There are over 250 Federally-recognized tribal governments with authority over reservation affairs. Commonly, tribal governments have tripartite functions, with executive, legislative and judicial responsibilities. Their court systems have the underlying civil jurisdiction to regulate on-reservation activities of non-Indians as well as tribal members.

In recent years, the reservations have witnessed a resurgence in Indian cultural interests and governmental self-confidence. This has produced a growing tribal pressure to overcome their long-standing, historical exclusion from Federal decisionmaking (which in the past has largely been the province of non-Indians) that critically affects the future of reservation life.

A keynote of the growing tribal strength is a call for tribal "self-determination," the concept that Indian tribes can and should have the power to make, and carry responsibility for decisions affecting the future of reservation life. Self-determination has been recognized as a fundamental principle of Federal Indian Policy by recent Republican and Democratic administrations, and by Congress in the Indian Self-Determination Act of 1975 (P.L. 93-638).

Although all tribes are not alike, and although every tribe is subject to the human pressures that beset any government, tribal governments have generally shown a notable concern for decisionmaking which is protective of the future of Indian cultures, lands, and environment, as well as economic welfare. The conditions under which tribal authorities govern are not easy, but tribes have established impressive credentials for refusing to accept easy solutions. Despite most tribes' severe economic need, there are persistent examples of tribal decisions to avoid uncontrolled financial solutions where the long-range social and environmental effects were unacceptable.

#### Unique Problems Affecting Federal Regulatory Approaches to American Indian Reservations

Indian tribes and reservations, due to historical factors, including treaties and the evolution of Federal law from the drafting of the Constitution to today, occupy a distinct place in our Federal system, somewhat different from that of the fifty states.

Although tribes are fully subject to Federal law and no longer interact with the Federal government through treaty-making, they retain the essential attributes of their original sovereignty. In addition, they retain certain rights established by earlier treaties and enjoy certain other rights assured by the Federal government and acknowledged at the time of the cessation of treaty-making. These latter rights are generally discussed in terms of the Federal Government's "trust responsibility" towards Indian tribes and lands.

In its broadest sense, the trust responsibility conveys a special Federal responsibility to foster and generally protect tribal interests and welfare. More often, the trust responsibility is discussed in connection with a specific Federal responsibility with regard to Indian land, to protect its value and, inherently, its environmental quality.

Another consequence of this special legal status of Indian tribes in our Federal system is that the states generally have only limited authority to regulate activities conducted on Indian reservations. This fact is particularly important to EPA because most of our statutes include a regulatory design utilizing state governments as entities for implementing, at the local level, coordinated Federal-state programs for the attainment of nationally-set goals and standards.

As state governments usually lack, on Indian reservations, the kind of power and regulatory authority they enjoy off-reservation, they cannot, in these cases, fulfill on Indian lands the full regulatory role originally designed by Congress for the local implementing government. Nor does Congress generally provide for state assumption of such regulatory power over reservation affairs. Where allowed, any such assumption is strictly and carefully controlled.

Furthermore, the responsibilities and activities of the Bureau of Indian Affairs and the Indian Health Service are concerned primarily with the delivery of services on Indian lands and are not essentially regulatory in nature. As a consequence, these agencies cannot be expected to fulfill a direct regulatory role for reservation lands under the EPA statutes.

In recent legislation, particularly the Surface Mining Control and Reclamation Act of 1978, Congress confronted the problem of the legal limits on the ability of state governments to implement national regulatory programs on Indian reservations. In keeping with the general concept of tribal self-determination, Congress asked the Office of Surface Mining (OSM, at DOI) to recommend appropriate legislative language to allow tribal governments to fill the regulatory gap left by the states' jurisdictional shortfall.

Hence, without some modification, our programs, as designed, often fail to function adequately on Indian lands. This raises the serious possibility that, in the absence of some special alternative response by EPA, the environment of Indian reservations will be less effectively protected than the environment elsewhere. Such a result is unacceptable. "The spirit of our Federal trust responsibility and the clear intent of Congress demand full and equal protection of the environment of the entire nation without exceptions or gaps under the programs for which EPA is responsible."

Finally, EPA must administer its programs in the context of public and community realities and of Federal policy towards program administration on Indian lands. In both respects, there is an unmistakable affirmation that Indian people, acting through their elected tribal governments, should have a primary role in the implementing decisions of Federal programs which affect the future of reservation life. This momentum results from the growth in strength and sophistication of tribal governments and a corresponding shift in Federal responses from an earlier, somewhat paternalistic attitude, towards one favoring self-determination. These factors--the Federal and tribal affirmations of the principle of tribal self-determination, the unique legal status of reservation lands and corresponding jurisdictional limits of state governments, and the special trust responsibility to safeguard

reservation lands which the Supreme Court has placed upon the Federal establishment--all affect our Federal regulatory and programmatic responsibilities on Indian reservations in a manner that is unique.

These distinguishing factors affecting Federal program administration on Indian reservations become doubly important when we remember that they affect EPA's responsibilities over a land mass larger in area than the total of the New England states, New Jersey, Delaware and Maryland.

#### Why an Indian Policy

We are establishing a policy for implementing EPA programs on Indian reservations because:

- ° The unique legal status of reservation lands and the corresponding short-fall in state authorities there combine to require EPA to take a special approach to ensure that Indian lands receive the degree of protection which our Congressional mandate requires for the entire nation.

- ° Indian governments have the fundamental legal jurisdiction, generally lacked by state governments, to regulate both Indian and non-Indian pollution sources on the reservations. As tribal governments are increasingly showing an interest in (and the capability of undertaking) environmental regulatory programs, we want to support and encourage these environmental and regulatory predilections. The tribal interest and potential capability in the environmental arena constitute a national resource with environmental benefits extending beyond the reservation boundaries. As a Federal regulatory agency, we have an opportunity to foster and support the environmental interests of the natural allies we have in our sister governments.

- ° The environment is generally best protected by those who have the concern and the ability to protect it. Indian people show an acute sensitivity to their loss of great tracts of this country. Even since the establishment of the original reservations by treaty, the Indian land base has shrunk to a minor fraction of the original reservations. This historical fact, combined with a long-standing cultural respect for the earth and its environment, is reflected in tribal expressions of concern for the land, its irreplaceability, and the importance of its environmental quality.

Certainly, if the principle favoring local stewardship of the environment has meaning anywhere, it is on the Indian reservation. This argument has been asserted many times by tribal leaders seeking an increased involvement and participation in carrying out EPA programs on reservation lands. We want to support this principle for Indian lands, i.e. that the Indian people themselves are in the best position to protect the quality of the environment on the reservations where they live.

° Confused and often contradictory decisions regarding programs on Indian reservations have in the past frustrated efforts to address specific environmental problems by various EPA Regional and program offices and by tribes, states and local governments. A clear and coherent policy is necessary to provide basic guidance and to form the basis for consistent decisionmaking.

° In addition, individual programs and regions have exercised initiatives in dealing with the particular problems of program implementation on Indian lands while others have made little or no progress. We need to build on the experience of the leaders within the Agency and, by carrying out a consistent Agency-wide policy, bring all parts of the Agency to a level of activity and progress consistent with that achieved by the Agency leaders.

#### Policy Statement and Principles

It is EPA policy to promote comprehensive environmental management by both states and tribes consistent with the overall aims and objectives of Federal environmental statutes. The Agency will also follow the general Federal policy in support of tribal self-determination; that is, that Indian people should have a central role in decisions affecting the future of reservation life.

It is EPA policy to:

Adapt and manage our national programs in response to the particular legal and political circumstances of Indian reservations so as to assure that these programs protect health and the environment on Indian reservations at least as effectively as elsewhere; and

° Promote an enhanced role for tribal government in relevant decisionmaking and implementation of Federal environmental programs on Indian reservations.

In support of these goals, EPA program managers will carry out their duties in a manner consistent with the following policy principles:

- ° EPA supports the principle of Indian self-determination and intends to follow this principle to enhance environmental protection on American Indian reservations. EPA will promote opportunities for tribal governments to assume a central role in implementing EPA's delegable Federal environmental programs and activities.

- ° Where tribes assume responsibilities for implementing Federal pollution control programs, they will be expected to meet stringent standards, similar to those imposed on states, in order to assume programs. The Agency will work with tribes assuming such responsibilities to encourage the participation of affected parties in decisionmaking concerning the reservation area. A high priority will be placed on working with tribes to enable them to meet and maintain these standards.

We recognize that, while tribes have the underlying civil jurisdiction to regulate reservation pollution sources, not all tribes have the present interest or administrative capability to carry out EPA programs in the manner that states do for non-Indian lands. Therefore, it must be clearly understood that EPA intends to provide tribes, where feasible, with the option to participate. EPA cannot and does not want to force or pressure individual tribes into assuming an unwanted role.

- ° Where tribes do not administer Federal pollution control programs on Indian lands, those activities and aspects of regulatory programs which states do not or cannot carry out on reservation lands will be administered by EPA. EPA is committed to assuring that the administration of Agency programs is as comprehensive and effective on Indian reservations as elsewhere.

- ° Where tribes do not assume responsibility for Federal program implementation, EPA will work with the tribes upon request to define other, more appropriate roles which they might take.

- ° Cooperation between tribal and state governments may be able to serve the mutual interests of both governments. Where such cooperation is working effectively or where such cooperation is agreeable to all concerned parties, it should be recognized and encouraged. Effective pollution control often requires inter-governmental cooperation, and this should be fostered where appropriate.

## Implementation

A statement of policy goals and principles is in itself not enough to effect changes or improvements in our program administration on Indian lands. They must be reflected in actions taken with responsiveness, intelligence and initiative at all levels of the Agency. Thus, I am taking several steps to help ensure that this policy is fully and effectively implemented.

° First, I am directing program managers to begin immediately to respond as fully as possible to tribal requests and problems so as to allow tribal governments to play a larger and more significant role in environmental programs on Indian reservations.

° Second, I am directing program managers to begin immediately to seek input from tribal governments when making EPA program decisions affecting reservation lands. Where EPA carries responsibility for implementing programs on Indian lands, a special effort must be made to assure that affected tribal governments have a meaningful voice in our implementation of those programs.

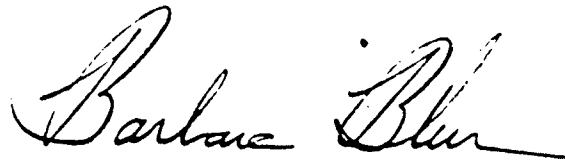
° Third, I am directing the Director, Office of Environmental Review, to coordinate, in conjunction with the Indian Work Group (IWG), program managers and Office Directors a review of EPA's existing legal charter (both statutes and regulations) and to identify and pursue modifications necessary to (a) resolve the regulatory problems currently arising from limitations to state jurisdiction on Indian reservations, and (b) allow tribal governments the option to play a central and significant role in implementing our programs on Indian reservations.

° Fourth, I am directing the Director, Office of Environmental Review, to develop, in coordination with the Indian Work Group and key program managers and Office Directors, an Agency Implementation Plan, to carry the force of Agency policy, listing specific Agency activities which, in addition to those listed above, will lead to the orderly and effective realization of this policy. EPA has already identified numerous issues which must be considered in developing detailed policy implementation proposals. Such issues, for instance, pertain to resource requirements, tribal/state relations and cooperative efforts with other Federal agencies. In this regard, individual program and regional offices have already

set a precedent demonstrating the Agency's ability to deal with these issues in carrying out the basic objectives of this policy.

° Fifth, I am directing the Director, Office of Environmental Review, in conjunction with the Indian Work Group and key program managers and Office Directors, to undertake periodic review of Agency program implementation activities affecting Indian lands, and to develop such other principles of policy and guidance on specific issues to be included as amendments to this policy as necessary to carry out the overall objectives of this policy in an orderly and rational manner.

Finally, a key to the successful implementation of this policy is the coordination of EPA and tribal efforts, along with the related efforts of IHS, BIA and other Federal agencies and state and local governments, to protect and enhance the environment of reservation lands. To help accomplish this important aim, EPA officials must remain constantly exposed to a range of reservation experiences and information, and must maintain contact with those people who represent tribal viewpoints and are working to meet reservation concerns. The emphasis on ongoing, institutionalized follow-up and non-Federal involvement is intended to provide a climate conducive to the development and execution of policies, programs, and initiatives which are sensitive to reservation needs and circumstances.

A handwritten signature in cursive script, reading "Barbara Blum". The signature is written in dark ink and is positioned above the printed name and title.

Barbara Blum  
Deputy Administrator